

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOVADAQ TECHNOLOGIES, INC.,

Plaintiff,

v.

KARL STORZ GMBH & CO. K.G., et al.,

Defendants.

Case No. [14-cv-04853-PSG](#)

**ORDER DENYING REQUEST FOR
RULING OF NO PRECLUSION**

(Re: Docket Nos. 273, 274)

After the close of fact discovery in this trademark infringement case, Plaintiff Novadaq Technologies, Inc. discovered that a Novadaq clinical sales specialist, Heather Arnold, allegedly encountered an instance of actual confusion at the Michael E. DeBakey VA Medical Center in Houston, Texas.¹ The court already has denied Novadaq leave to file a declaration from Arnold in support of its opposition to summary judgment motions by Defendants Karl Storz GmbH & Co., K.G. and Karl Storz Endoscopy-America, Inc.² Novadaq now asks the court to rule that it should not be precluded from offering Arnold's testimony at trial.³ Karl Storz objects, citing the untimeliness of the disclosure and the prejudice that Karl Storz would suffer from the admission.⁴ Karl Storz argues that the late disclosure hampers its ability to depose Arnold and obtain discovery from the DeBakey Medical Center employees who Arnold claims were confused, especially given

¹ See Docket No. 274 at 1-2.

² See Docket No. 263.

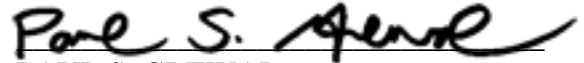
³ See Docket No. 274.

⁴ See Docket No. 273.

1 the impending deadlines for pretrial filings and the trial date in early January.⁵ In light of this
2 prejudice to Karl Storz, the court DENIES Novadaq's request for a ruling of no preclusion.

3 **SO ORDERED.**

4 Dated: October 21, 2015



5 PAUL S. GREWAL

6 United States Magistrate Judge
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27 ⁵ See *id.* at 4.